

48A C.J.S. Judges § 65

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

III. Term and Tenure of Office; Vacancy

E. Termination of Term

2. Termination by Age Limit or Retirement

§ 65. Service after retirement

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  [7](#)

In some jurisdictions, there is statutory authority authorizing the recall, assignment, or designation of a retired judge to perform certain authorized judicial duties.

Pursuant to valid provisions,¹ and not in violation of constitutional provisions relating to the term of office,² a retired judge may be recalled, assigned, or designated to perform certain authorized judicial duties³ for a designated period of time.⁴

In some jurisdictions, a board or commission possesses discretion to determine whether a judge will be certified for service after retirement.⁵ In other jurisdictions, where a retired judge has properly filed his or her election to continue to serve as a judicial officer, no formal order is needed in order to permit him or her to preside over a cause.⁶ The fact that a judge has been defeated for reelection does not interfere with his or her right to retire at or before the expiration of his or her term and, thereafter, sit as a retired judge.⁷

Pursuant to statutory authority, a circuit judge who has retired is ineligible to participate in the decision of a case on rehearing en banc in that he or she is not an active circuit judge of the circuit involved.⁸ This is so, even where he or she took part in the original three-judge hearing, or was not yet retired when the en banc hearing was originally ordered.⁹

After reaching mandatory retirement age.

A constitutional provision setting a mandatory retirement age may permit, subject to necessity and approval, retired judges to assigned to serve as senior judges.¹⁰

Reappointment after retirement.

A judge who voluntarily retires may immediately seek and receive future appointment as a judge or supreme court justice.¹¹

CUMULATIVE SUPPLEMENT

Cases:

The Recall Statute, under which the Supreme Court may recall retired judges for temporary judicial service, does not usurp the Governor's constitutional authority to appoint judges and thus does not violate the doctrine of separation of powers; the Governor may appoint a new judge as a replacement for a retired judge even if the newly-retired judge is recalled. [N.J.S.A. Const. Art. 3, par. 1](#); [N.J.S.A. 43:6A–13](#). [State v. Buckner](#), 121 A.3d 290 (N.J. 2015).

[END OF SUPPLEMENT]

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Footnotes

1 U.S.—[Lurk v. U.S.](#), 296 F.2d 360 (D.C. Cir. 1961), judgment aff'd, 370 U.S. 530, 82 S. Ct. 1459, 8 L. Ed. 2d 671 (1962).

Mass.—[Opinion of the Justices](#), 362 Mass. 895, 284 N.E.2d 908 (1972).

2 Cal.—[Pickens v. Johnson](#), 42 Cal. 2d 399, 267 P.2d 801 (1954).

3 U.S.—[In re National Recreation Products, Inc.](#), 403 F. Supp. 1399 (C.D. Cal. 1975).

As to senior judges in the federal system, see § 4.

Liberal construction required

U.S.—[Two Guys from Harrison-Allentown, Inc. v. McGinley](#), 266 F.2d 427 (3d Cir. 1959).

Recall on case-to-case basis

Utah—[Nelson v. Miller](#), 25 Utah 2d 277, 480 P.2d 467 (1971).

Recall to make findings of fact

Mich.—[Dauer v. Zabel](#), 381 Mich. 555, 164 N.W.2d 1 (1969).

Performance of acts outside retired judge's authority prohibited

Wash.—[State ex rel. New Washington Oyster Co. v. Meakim](#), 34 Wash. 2d 131, 208 P.2d 628 (1949).

4 Cal.—[Pickens v. Johnson](#), 42 Cal. 2d 399, 267 P.2d 801 (1954).

5 N.Y.—[Lefkowitz v. Bartlett](#), 52 A.D.2d 657, 381 N.Y.S.2d 703 (3d Dep't 1976).

Judge not entitled to hearing before board

N.Y.—[Marro v. Bartlett](#), 61 A.D.2d 729, 403 N.Y.S.2d 924 (3d Dep't 1978), judgment aff'd, 46 N.Y.2d 674, 416 N.Y.S.2d 212, 389 N.E.2d 808 (1979).

Nearly unfettered discretion

N.Y.—*Maresca v. Cuomo*, 105 A.D.2d 193, 483 N.Y.S.2d 690 (1st Dep't 1984), order aff'd as modified on other grounds, 64 N.Y.2d 242, 485 N.Y.S.2d 724, 475 N.E.2d 95 (1984).

6 Tex.—*Crawford v. State*, 509 S.W.2d 582 (Tex. Crim. App. 1974).

7 Tex.—*Dorsey v. State*, 450 S.W.2d 332 (Tex. Crim. App. 1969).

8 U.S.—*American-Foreign Steamship Corporation v. U.S.*, 368 U.S. 895, 82 S. Ct. 171, 7 L. Ed. 2d 92 (1961); *U.S. v. American-Foreign S. S. Corp.*, 363 U.S. 685, 80 S. Ct. 1336, 4 L. Ed. 2d 1491 (1960); *Allen v. Johnson*, 391 F.2d 527 (5th Cir. 1968).

9 U.S.—*Stockard Steamship Corporation v. U.S.*, 368 U.S. 895, 82 S. Ct. 172, 7 L. Ed. 2d 92 (1961); *U.S. v. American-Foreign S. S. Corp.*, 363 U.S. 685, 80 S. Ct. 1336, 4 L. Ed. 2d 1491 (1960).

10 Pa.—*Driscoll v. Corbett*, 69 A.3d 197 (Pa. 2013).

11 Alaska—*In re Cummings*, 292 P.3d 187 (Alaska 2013).

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